to the patient. Judge Cooley treats a breach of this duty as one of the wrongs in confidential relations (Cooley on Torts, 2d ed., 619). It is submitted that the liability of the physician in *De May* v. *Roberts*, 46 Mich. 160, must rest on his "undertaking" to act in a professional manner. While it is true that the physician is not privileged from testifying, this does not show there is no legal duty of secrecy, for the law simply does not allow the "undertaking," if it extends so far, to interfere with the ascertaining of truth in a judicial inquiry. It is needless to comment on the oft-attacked rule that physicians and the clergy are not privileged. As long as it exists, however, it must be a good defence for the physician in any action for the disclosure of a communication. The exact limits of this "undertaking" can only be ascertained when the question actually comes up. Whether, as some physicians claim, disclosure can be made as necessity requires, the physician being the judge of the necessity, though the secret is the patient's, will then be determined. In determining this question, it would seem that aid should be sought in the testimony of physicians and others having special knowledge.

INTERPRETATION OF STATUTES — LEGISLATIVE POWERS. — Any decision declaring a statute unconstitutional upon general grounds, with a vigorous dissenting opinion, is likely to awaken general interest. The case of *Commonwealth ex rel. Koney* v. *Warwick, Mayor*, 33 Atl. Rep. 373 (Pa.), therefore, which sets forth a novel view of the constitutional restrictions on the powers of the legislature, has naturally aroused some discussion. A statute was passed in Pennsylvania directing that certain words in a previous statute, defining the term for which a certain appointee should hold office, should be construed to mean something which they evidently had not previously meant; many years later the question arises as to the length of such an appointee's term; and the court has refused to give the latter statute any effect, on the ground that it was unconstitutional, as an attempt to usurp judicial functions by directing the courts to construe an existing law in a manner contrary to its clear meaning.

This amounts to a decision that all "declaratory" or expository statutes are wholly void, except when there was a real ambiguity in the terms of the previous law. Now the only ground on which such statutes have hitherto been declared unconstitutional has been that they were retrospective in their application. In all the cases cited by the court the question was whether the legislature had power to direct the courts to apply the law as stated by the declaratory statute to transactions occurring before its enactment. And it has been often held that the legislature has no such power; or, if it might conceivably have such a power in some cases, is not to be presumed to intend to exercise it. Even the English courts are reluctant to allow a statute to interfere with rights already vested; and in this country the courts have the advantage of being usually able to find some constitutional impediment. Exceptions are allowed to this rule against giving statutes retrospective application only in certain classes of cases where no vested rights are considered to be involved, besides the cases where the previous statute was really ambiguous, in which cases the legislature's explanation of its true intent is entitled to respect.

There has never been any decision, however, until this Pennsylvania case, that a declaratory statute is not binding on the courts so far as it is

applicable to transactions occurring after its enactment. Such statutes, which are common in many jurisdictions, practically amount to re-enactments of the previous law in amended terms, and are given effect accordingly. It is true that a statute may be objectionable in form which purports to be capable of retrospective application when such an application would be unconstitutional. It by no means follows, however, that it should be held altogether void. Judge Cooley, in a passage subsequent to that quoted by the majority of the court in support of their opinion, makes an important qualification of his objections to declaratory statutes: "But in any case," he says, "the substance of the legislative action should be regarded rather than the form; and if it appears to be the intention to establish by the declaratory statute a rule of conduct for the future, the courts should accept and act upon it, without too nicely inquiring whether the mode by which the new rule is established is or is not the best, most decorous, and suitable that could have been adopted." Cooley on Constitutional Limitations, 6th ed., p. 113.

The objections to declaratory statutes are recognized in the Pennsylvania Constitution of 1874, the provisions of which as to the form in which all statutes shall be passed prevent any statute similar in form to the one in dispute from being now enacted. But that, of course, does not concern an act of 1867. The courts may dislike the form of a statute the provisions of which appear to apply to past as well as future cases, when it would be an unconstitutional usurpation of judicial authority to direct the court to apply them retrospectively. But it would seem that the fairest manner of regarding the statute would be to take it as intended only to apply prospectively. By insisting on their objections to the form of the statute, the court would almost seem, in their zeal against statutes that might be retrospectively applied, to be in effect retrospectively applying the provisions of the Constitution of 1874.

Liquor-Selling by Clubs. — Is a social club, which dispenses liquor to its members in the ordinary mode, amenable to the liquor law? The conflict of authority on this point is doubtless due partly to variations in the wording of the different statutes. But even where the statutes are substantially the same, courts have reached the most divergent results. The form in which the question ordinarily arises is this: Does the dealing out of liquor by the steward of a club in response to the order of a member constitute a sale within the meaning of a statute which provides that no one shall sell liquor at retail, to be drunk on the premises, without a license? The New York Court of Appeals has just answered this question in the negative. In *People* v. *Adelphi Club*, 43 N. E. Rep. 410, it was held that the dispensing of liquors by a social club, which has a limited and select membership, and was organized for a legitimate purpose, to which the furnishing of liquors to its members is merely incidental, is not a sale within the meaning of the law. The weight of authority is in accord with this view. *Commonwealth* v. *Pomphret*, 137 Mass. 564; *Seim* v. *State*, 55 Md. 566; *State* v. *St. Louis Club*, 28 S. W. Rep. 604 (Mo.).

Strictly speaking, it would seem that the transaction amounts to a sale. It can hardly be called a mere division of property belonging to the members of the club in common. The title to the liquor is certainly in the club, and though it is transferred only to members and without expec-